

Q&A Gold King Mine Call 8.26.15

General Incident Questions:

- **Timeline-Why did it take so long?**

Today EPA released additional documents on the Gold King Mine website which outlines the notification process. As previously mentioned, the internal investigation we are discussing on this call was not charged with reviewing that portion of the incident. We take full responsibility for the notification process and will do better in the future. We will review and revise notification procedures to ensure that all parties and all levels receive notification. Notification procedures are part of contingency plans developed in each of the Regions with all States. *[Region 8's Contingency Plans describes their notification procedures states that "in the event of an incident, the state RRT representative will...notify downstream users (municipal, industrial, and agricultural) of all discharges and releases that may threaten them." (Section 300.180, p. 22)*

- **How did you let this happen? Your own documents show that you knew of the blowout risk. Did EPA actions cause it?**

EPA and the State presence on the site was to address the risk from the mine including the risk of blowout. Various signs at the mine (pressure readings, water leakage) indicated the water pressure was not as high as it turned out to be. Despite available information suggesting low pressure behind the debris at the adit entrance, there was in fact sufficiently high pressure to cause the blowout.

It's not a simple yes or no answer. Region 8 assembled clues to the pressurization question and concluded there was minimal pressure. Decisions were made based on that assumption. The region could have done one more assessment -- to drill from above -- but that was deemed too dangerous (challenging and unstable), would take multiple seasons and required more funds than were available. Since the Red and Bonita Mine was being plugged this year, there was a sense of urgency to measure the change in flows that would be expected to come into the Gold King Mine from the Red and Bonita Mine.

The team deemed it safe to proceed based on eight findings/conditions that led to the conclusion that the adit was not pressurized. Therefore they proceeded with low pressure assumptions. Worst case scenarios are always a possibility but were not considered a probability in this situation.

Although anticipated as it would be in any similar situation, the likelihood of a blow out was deemed small based on the 8 findings of non-pressurized mine water.

- **What is happening at the site now?**

As water exits the mine, the water flows into a system of four treatment ponds. The treatment ponds provide retention time to allow the addition of lime to neutralize the pH. Substances to treat water are added during the process to settle the metals to the bottom of the retention ponds. One additional retention pond is being added to the treatment

system to allow crews to manage the solids that has settled out to date. This additional pond will allow the treatment system to maintain efficiency as the crews.

- **Can you speak to the Superfund discussions going on?**

EPA has and will continue to work with our partners and stakeholders to determine the best path forward in addressing mining impacts in the Animas River watershed. The 1986 amendment of the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA, better known as Superfund) contains public participation provisions that direct the EPA to engage communities affected by actual and potential Superfund NPL sites about cleanup decisions, including the decision to list a site. The Superfund National Priorities List (NPL) identifies the most serious sites that the EPA has designated to be eligible for long-term cleanup. When the EPA proposes to add a site to the National Priorities List (NPL), the Agency publishes a public notice about its intention in the *Federal Register*. The EPA also issues a public notice through the local media to notify the community, so interested members of the community can comment on the proposal. The EPA must respond to the comments it receives. After consideration of those comments and weighing other factors, the Agency may proceed with adding a site to the NPL. EPA has been requested to brief the community stakeholders on the Superfund process – that will occur soon.

- **Can you give us the latest on the Navajo water usage for agriculture?**

EPA is working with the Navajo Nation to investigate complaints related to one agricultural water tank that was delivered to the Shiprock area.

Following the Gold King Mine release, which impacted the San Juan River, an EPA contractor supplied thirteen tanks for watering service within the Navajo Nation. Nine of these tanks were deployed in the Shiprock area; EPA did not administer water distribution from those tanks. The tanks were sourced from the water division of Triple S Trucking Company, an Aztec, N.M.-based tanker truck company. EPA contracted for the tanks to be cleaned and inspected prior to use at Shiprock. Water distributed by Triple S tanks was provided by the Bloomfield Utility Department, the municipal water utility company for the City of Bloomfield, N.M.

EPA is examining the records related to the tank and working with the tribe to remove the tanks from the staging sites.

The U.S. Environmental Protection Agency is committed to working collaboratively with the Navajo Nation on response activities related to the Gold King Mine release. Since August 13, EPA has had a full-time liaison officer to the Navajo Nation's Command Center in Window Rock to discuss and plan short- and long-term EPA assistance to the tribe. EPA continues to arrange for hay deliveries for livestock on the Navajo Nation, to hold regular calls with tribal officials for sharing and evaluating water sampling data, and to provide other technical assistance to the tribe aimed at restoring San Juan River irrigation canal water for agricultural purposes.

- **How soon will you lift the moratorium on this type of work?**

While we continue to investigate the root causes of last week's release of mining waste at the Gold King Mine in Colorado, we have instructed our Regions to cease any field investigation work at mines including tailings facilities, unless there is imminent risk in a specific case. Based on the outcome of the independent assessment being conducted by the Department of Interior, EPA will determine what actions may be necessary to avoid similar incidents at other sites.

INVESTIGATION QUESTIONS:

- **How does this investigation work with the external investigations with Interior and the Inspector General?**

EPA has shared the results of our internal investigation to both the Department of Interior and the EPA Inspector General.

- **You mentioned the state was there with you, what role did the state play? Are you passing blame to them?**

EPA has been working collaboratively with the Colorado Division of Reclamation and Mining Safety at the Gold King Mine site as well as other sites in the area. EPA was the lead agency on the site, but was working closely with the state and with Animas River Stakeholder Group.

EPA was asked by the state to help out because the Sunnyside mine complex area (of which Gold King Mine is a part) project was deemed too large, complicated and expensive for the State to continue without assistance.

- **Will someone be fired for causing this incident?**

EPA and external entities will be thoroughly investigating the full facts regarding this incident and the response, and the agency will respond based on that information. There is no one individual responsible. A team of EPA, state, and contractors in consultation with the stakeholder group, made the decision, based on the data available, to proceed with the assessment of the mine.

All evidence shows that the OSC(s) are well qualified and experienced in these types of operations. They followed a process of work plan development, including obtaining State and stakeholder consensus, that precluded quick, poorly thought-out actions.

- **Were the actions taken at Sunnyside responsible for water that was coming out of Gold King Mine?**

The relationship between the water in the Sunnyside Gold Mine and other mines in the area is a complex topic. Many of the mines in the area either intersect the same geologic structures and/or are in close proximity to the same structures. The DRMS has extensive knowledge and details on Sunnyside and other mines in the area, and that information has been the subject of extensive discussion and review with EPA and the Animas River Stakeholder Group (ARSG) over the last several years.

- **Can you speak to the recommendations that are laid out in the report?**
EPA is prepared to implement all the recommendations from this report. We will immediately begin to include in operating procedures steps included in the recommendation emergency action plans that consider blowout risks. We will be engaging external experts on the development of broader guidance and tools.
- **How were the people chosen for the investigation and what are their qualifications?**

The team was composed of two geologists (one Certified Engineering Geologist) and two engineers (one a Professional Engineer) and one attorney, all with extensive mining background. Four of the team members are regional staff; one is from Headquarters.

- **Did HQ influence the independence of the investigation?**
No, the investigators were given full access to all documents and all people involved.
- **Did the Regions have an action plan in case of a blowout?**
The blowout was not anticipated because of the 8 factors, so there was no plan in place. Even in the absence of a emergency plan, however, the team acted quickly to ensure there were no injuries to anyone on site.

Claims Process:

- **Who is eligible to file a claim with EPA under the Federal Tort Claims Act for injury or damage?**
Individuals, businesses or governmental entities that have a claim for money damages resulting from personal injury, property damage or economic loss caused by negligent or wrongful U.S. government actions.
- **How much time do I have to file a claim?**
You have two years from the date of the event to file a claim with EPA under the FTCA for injury or damage.
- **The Standard Form 95 refers to personal injury and property damage, what if I suffered economic damages caused by the incident?**
A loss of income may be claimed as a damage for this incident.
- **Can a claim be made for impacts to agriculture and agricultural yields?**
A claim can be submitted for any type of claim allegedly caused by the negligence or wrongful act, like damage to property, personal injury or claimed economic losses. Please note that a completed form must state a claim for money damages in a specific amount claimed for personal injury, death, or injury to or loss of property.
- **The Standard Form doesn't seem to have a place to list these claims for economic losses? What should I do?**

Block 8 of the Standard Form 95 should be used to describe the facts and circumstances for the claim and in that block describe the losses you suffered from the incident. Additional pages may be attached to the SF-95 if needed. In addition, you should attach any documentation to substantiate amounts of your claims to the Standard Form 95. You may submit amendments to the claim based on additional information at a later time. The EPA Claims Officer may request additional information as well.

- **Does the following language in the Federal Tort Claims Act (FTCA) claim Standard Form 95 (also identified as – OMB No.1105) limit or waive future rights of the claimants? *"The language of concern appears above the signature block and states: I certify that the amount of the claim covers only damages and injury caused by the incident."***

That language is not intended to waive any of the claimant's rights in connection with filing a claim and is intended to refer to a final payment to settle the claim. The EPA FTCA regulation, at 40 CFR Part 10, provides that a person may amend their claim form at any time prior to reaching a settlement with EPA, or before the person files a lawsuit under the FTCA. Additionally, a person claiming an injury or damage has two years from the date of the event to file a claim with EPA under the FTCA.

- **After I reach a final settlement with EPA, can I file additional claims related to the Gold King Mine accident?**

If you discover after submitting your claim that you have suffered more damages, you must amend your original claim in order to have EPA consider the new damages. If you accept a final settlement from EPA for your claim related to the Gold King Mine accident, you may not pursue additional claims originating from the Gold King Mine accident.